

The nitrates derogation

There's still time to apply...the benefits can be far greater than simply receiving the derogation itself

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Many farmers complete the derogation plan and records because they have to for cross-compliance, stock density reasons and to protect their Basic Payment. They sometimes don't see the potential benefits from discussing all aspects of nutrient management.

Maurice Smiddy who farms dairy cows near Ballymacoda, Co Cork, says that completing the application is a great way to ensure he gets the most from slurry and fertiliser.

"You assess slurry capacity of the farm, which means you'll know you have enough storage in place for the animals you intend to carry. By discussing future plans, you'll know how much additional capacity you might need and whether that will require investment," Maurice says. "Doing the derogation also means that you'll have a full profile of the soil fertility status of the farm. You'll have identified areas that need lime – and you can manage your spending on lime by targeting the low pH areas first.

"You'll have ongoing monitoring of the soil fertility status – is it getting better or worse, for example? And you will have a record of areas that need P and K. You'll also know which fields will respond to slurry/FYM or soiled water application. All of this means you know exactly how much fertiliser to buy and what types. Fertiliser is a big cost and I want to manage it well."

While completing the derogation application with your Teagasc advisor, you will also discuss feed and fertiliser purchases for the previous year, stocking rates and any plans you may have to increase this, the implication of dropping rented land/taking on extra land, the amounts and types of fertiliser you should be purchasing, fertiliser allowances for



Liz Duffy and Cork dairy farmer Maurice Smiddy at the Teagasc office in Midleton.

different crop types, etc. On the day you come in, there are three main jobs to be done: complete records for the year just gone, apply for the derogation and prepare a fertiliser plan for the coming year.

What you should bring

- **Feed for 2014:** to complete records for 2015.
- **Fertiliser for 2015:** to complete records for 2015.
- **Feed 2015:** to prepare a plan for 2016.
- **Soil samples:** must be dated after 15 September 2012 to be valid for 2016.
- **Stock figures for 2016.**
- **Any changes to land area for 2016.**
- **Any changes to yard, e.g. new buildings, slurry storage facilities, etc.**
- **Copy of your 2014 fertiliser records (any opening stock of chemical fertiliser in 2015).**

What you will have when leaving:

- Completed records for 2015.
- Updated plan for 2016 taking account of any changes.
- Clarity about what your fertiliser N and P limits are.
- Remember there are no limits to potash (K) or lime and these should

be spread in line with soil analysis reports.

- Info about when your soil samples need to be retaken.
- A full understanding of what is in the fertiliser plan, particularly what the soil analysis is saying.
- Details about the waste storage capacity of the farm – what is the limit of the stock you could keep over a winter based on your current facilities? This is one major area that will be checked if you get a cross-compliance inspection.

"Whenever you have to fill out an application, it's a bit of a chore," concludes Maurice Smiddy. "But it's easier if you have help and as well as actually getting the derogation it's a useful opportunity to touch on aspects of the farm today and future plans."

How is the NPH figure arrived at?

The kilos of nitrogen per hectare figure is arrived at by dividing the total kilos of nitrogen produced on the farm by the eligible area under the Basic Payment Scheme.

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The annual nutrient excretion rate for dairy cows in the regulations is 85kg, so if for example you had 30 dairy cows on the farm (with a farm size of 20ha) for the full year, the total N figure would be 2,550kg and the NPH would be 127.5kg, rounded to 128kg, ie 2,550kg divided by 20.

- N figures for cattle are calculated on a daily basis using data from AIMS.
- Maximum kilos of organic fertiliser you're allowed to apply to land = your hectares x 170kg (or 250kg for derogation farmers).

Table 1: Nitrogen excretion figures for typical animals

Animal type	kg/head/year
Dairy cow	85
Dairy cow	85
Suckler cow	65
Cattle > two years	65
Cattle (one to two years old)	57
Cattle (newborn to one year old)	24

- E.g. 20ha x 170kg per ha = 3,400kg nitrogen.
- E.g. 20ha x 250kg per hectare = 5,000kg nitrogen.
- To get your nitrogen per hectare (NPH) divide your total kilos by your hectares.

Example of a farm with 30 dairy cows and 10 sucklers on farm for 12 months: [30 x 85 + 10 x 65] = 3,200kg N. 3,200kg N divided by 20ha = 160NPH.

Derogation statistics

- 6,323 farmers applied for a derogation in 2015.
- Teagasc helps to support 70% of the derogation applicants.
- 2,336 farmers breached the 170NPH limit in 2014 and did not apply for a derogation. Some of these farms may have exported slurry, rented/grazed other lands not declared on SPS 2014 or some farms may have been locked up with TB in 2014 and were unable to reduce cattle numbers. All of these can help reduce the NPH on farms. See Table 2.

Penalties

DAFM nitrates penalties for exceeding the stocking rate limits are shown in Table 3.

Farmers who exceeded 170NPH without a derogation or those derogation farmers who exceeded 250NPH, will receive letters from the DAFM this spring indicating the breaches; and they will be penalised on payments from EU-funded schemes of which they are in receipt, unless they could provide an adequate explanation which shows that the farm was

Table 2: Derogation statistics

Year DAFM data	Approved derogation applicants (REPS and derogation farmers)*	Farms > 170 who did not apply for a derogation **	Farms > 250 who did not apply for a derogation ***
2007	4,133	3,600	700
2008	3,855	3,700	500
2009	4,909	3,477	470
2010	4,190	3,520	496
2011	4,600	2,800	450
2012	5,214	3,047	446
2013	4,932	1,511	158
2014	5,120	2,336	250
2015	6,323	Not available yet	Not available yet

* Derogation applications rising steadily since 2007.

** Farms >170NPH who did not apply for a derogation have reduced significantly since 2007, but in 2014 and 2015 these have risen due to increased stock numbers on mainly dairy farms.

*** Farms > 250NPH reducing gradually as farmers are proactive in reducing stocking rates to comply with the nitrates and derogation terms and conditions.

not above the 170kg NPH in 2015. The DAFM recommends that all recipients of these letters should contact their agricultural consultant for advice.

The DAFM letters will contain the following text "according to our records you are in breach of the nitrates regulations. Our records indicate that the total amount of nitrogen from livestock manure applied on your farm for [YEAR] was XXXkg per hectare (kg N/ha), which is more than the limit of 170kg...."

What happens if I exceed the limit more than once?

Penalties will be multiplied by three for repeated breaches within three calendar years. On a first repetition, the current sanction is multiplied by a factor of three. For second or further repetitions (reoccurrences), the previous percentage sanction is multiplied by three, up to a maximum of 15% for negligent sanctions. Repeat breaches after this will be deemed intent, and will lead to higher sanctions up to the loss of the current calendar year's entire payment(s). It can also lead to the loss of any payment(s) due in the following calendar year.

Table 3: DAFM penalties

Band for non-derogation applicants	% penalty
>170 <=180	1%
>180 <=210	3%
>210 <=250	5%
>250	20%
Band for derogation applicants	% penalty
>250 <=300	5%
>300	20%

Derogation requirements

- All terms and conditions of the derogation must be adhered to.
- You must make an annual application online to DAFM.
- You must be farming a holding which is at least 80% grass.
- You must have grazing livestock – a derogation is only available in respect of grazing.

Livestock

- Derogation applicants cannot import

organic manures from a grazing live-stock enterprise.

- You must have a fertilisation plan in place for your holding by 1 March each year. This plan must be submitted online to the Department along with your application form unless you have an approved REPS4 plan in place OR unless you had an approved derogation in 2013, 2014 or 2015 nitrates derogation application and have not had significant change.

- You must keep fertiliser accounts. After the end of each calendar year, your fertiliser accounts must be submitted online no later than 31 March of the following year.

- Derogation fertiliser plans in 2016 must be based on soil analysis results dated after 15 September 2012.

- Applicants who have applied for a derogation for the first time in 2015 must have taken soil samples in 2015 to be approved for the derogation.
- New derogation applicants in 2016 must have valid soil samples at the time of application or must have soil-sample results on the holding by 31 December 2016. Otherwise, the derogation application in 2016 will be deemed invalid by DAFM.

- New derogation applicants who do not have soil analysis results must assume Index 3 for 2016.

- Soil samples must be for every 5ha of land declared on BPS 2016 (including owned, leased and conacre lands).

- New derogation applications in 2016 require a farmyard sketch that provides a link with the buildings outlined on the fertiliser plan.

- Application deadline is 31 March 2016 and can only be submitted online.
- Fertiliser records for 2015 must be submitted online by the deadline for 2015 of 31 March 2016.

- Fertiliser records need to include details of chemical fertiliser bought in 2015 (including any opening stock on 1 January 2015, and concentrate bought in 2014). These can only be submitted online in 2016.

- Derogation farmers are liable to a 5% DAFM inspection if in derogation.
- Full details of the scheme are available on the DAFM website.